

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

BRANDON OTHA MARTIN,)	
)	
Plaintiff,)	
)	
v.)	1:24CV110
)	
CHARLES F. BIRKHEAD, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

The Order and Recommendation of the United States Magistrate Judge was filed with the Court in accordance with 28 U.S.C. § 636(b) and, on February 22, 2024, was served on the parties in this action. (ECF Nos. 3, 4.) Specifically, the Magistrate Judge determined that Plaintiff's Complaint could not be further processed because: (1) the filing fee was not received nor was a proper affidavit to proceed *in forma pauperis* ("IFP"), with sufficient information, submitted; (2) the Complaint was not on the proper forms nor was the information otherwise contained in Plaintiff's submission; and (3) Plaintiff's claims were not clear. (*See* ECF No. 3.) The Magistrate Judge therefore recommended that this action be dismissed *sua sponte* without prejudice to Plaintiff filing a new complaint, on the proper § 1983 forms, which corrects the noted defects. (*Id.* at 2.)

No objections were filed within the time prescribed by § 636. Although no objections were filed, Plaintiff filed a Motion for Leave to File Amended Complaint, attaching the amended complaint. (ECF Nos. 5, 6.) In the amended complaint Plaintiff corrects a defendant's name, omits a defendant, seeks to add new defendants, and asserts more

allegations surrounding Defendants’ alleged violations of his constitutional rights. (*See* ECF No. 6.) At this juncture, Plaintiff may amend as a matter of right, *see* Fed. R. Civ. P. 15(a)(1). However, for the reasons that follow, the Court adopts the Magistrate Judge’s recommendation as modified and dismisses this action *sua sponte* without prejudice to Plaintiff proceeding in his substantively identical pending action, *Martin v. Birkhead et al.*, No. 1:24CV165 (M.D.N.C., filed February 22, 2024) (“*Martin II*”).

First, while Plaintiff filed the amended complaint, he did not submit the filing fee nor a proper affidavit to proceed IFP in this matter. Thus, the Court adopts the Magistrate Judge’s recommendation to the extent that it finds dismissal appropriate for this defect.

Moreover, Plaintiff filed the amended complaint on March 14, 2024, several weeks after he initiated the *Martin II* action. The amended complaint in the instant action includes claims under state law and under 42 U.S.C. § 1983 for violations of Plaintiff’s constitutional rights stemming from an alleged assault on November 25, 2023, and other conditions of confinement. (*See* ECF No. 6.) These allegations are largely duplicative in nature of the time period and allegations asserted in the pleadings in *Martin II*. (*Compare id. with Martin II Amended Complaint*, 1:24CV165, ECF No. 5.) In addition, the named defendants in both pleadings are substantially similar,¹ and the injuries alleged, and relief sought are nearly identical. “Because district courts are not required to entertain duplicative or redundant lawsuits, they may dismiss such suits Generally, a lawsuit is duplicative of another one if the parties, issues and

¹ “Mrs. Burwell,” named as a defendant in the amended complaint in the instant action, is not a named defendant in the first amended complaint in *Martin II*. However, Plaintiff does mention her in a filing that has been docketed as a supplement to that complaint. (*See Martin II*, 1:24CV165, ECF No. 31.) In any event, as stated herein, if Plaintiff wishes to make amendments in that case, he may seek leave to do so.

available relief do not significantly differ between the two.” *Cottle v. Bell*, 229 F.3d 1142 (4th Cir. 2000) (unpublished table decision); *see I.A. Durbin, Inc. v. Jefferson Nat. Bank*, 793 F.2d 1541, 1551-52 (11th Cir. 1986) (collecting cases). Here, Plaintiff has been granted IFP status in *Martin II*, which remains pending. Therefore, in the interest of judicial efficiency, the undersigned concludes that the amended complaint in the instant action will be summarily dismissed as duplicative of another action pending in this Court.

The Court notes that Plaintiff has made dozens of filings and motions in *Martin II* that are currently pending before the Court. If Plaintiff wishes to add parties or make further amendments regarding the claims he pursues in relation to the facts alleged that underlie the amended complaint in the instant action, he may seek leave to do so in *Martin II*.

IT IS THEREFORE ORDERED that Plaintiff’s Motion for Leave to File Amended Complaint, (ECF No. 5), is **GRANTED**.

IT IS FURTHER ORDERED that the Magistrate Judge’s Recommendation, (ECF No. 3), is **ADOPTED AS MODIFIED HEREIN**.

IT IS FURTHER ORDERED that this action is **DISMISSED WITHOUT PREJUDICE** to Plaintiff pursuing his claims in *Martin v. Birkhead et al.*, No. 1:24CV165 (M.D.N.C, filed February 22, 2024).

A Judgment dismissing this action will be entered contemporaneously with this Order.

This, the 21st day of February 2025.

/s/ Loretta C. Biggs
United States District Judge